THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 10889 of 2005

Dated: 22-09-2005

Between:

M/s. Sri Veerabhadra & Company rep. by its Managing Partner-P.Krishna.

..Petitioner.

And

The Commissioner and Director of Marketing, Andhra Pradesh, Hyderabad and others.

..Respondents.

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ORDER:

When the vacate petitions filed by the respondents are listed for consideration, with the consent of both the parties, the main writ petition itself is heard.

This writ petition is filed in the name of M/s Sri Veerabhadra & Company, represented by its Managing Partner P. Krishna. The specific case of the writ petitioner is that P. Krishna along with Smt P. Sandhya Rani and K.R. Mallesh entered into partnership firm and got it registered under the Indian Partnership Act, 1932. It is stated that prior to the execution of the Partnership Deed, K.R. Mallesh, the husband of the third respondent, was carrying on business in vegetables at Monda Market by obtaining licence under Section 12 of the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act, 1966 in the name and style of M/s Sri Veerabhadra and company. It is also stated that the shop No.B-35 of Bowenapally Agricultural Market Yard was allotted in the name of the firm. It is also not in dispute that licence was renewed on 15-3-2003 and the same is valid up to 31-3-2008. While so, K.R.Mallesh, the husband of the third respondent, died on 02-09-2003. Thereafter, the third respondent filed O.S.No.1095 of 2003 on the file the Court of the XI Junior Civil Judge, City Civil Court, Secunderabad seeking a decree for permanent injunction against the writ petitioner from interfering with their peaceful possession and enjoyment of the shop bearing No.B-35 of Bowenapally Agricultural Market Yard. The case of the third respondent i.e., the plaintiff in the said suit, was that M/s. Veerabhadra & Company is a proprietary concern, represented by its sole proprietor K.R.Mallesh. Pending the said suit, a temporary injunction was also sought for and the same was allowed by the trial Court. Aggrieved by the same, the writ petitioner filed C.M.A.No.15 of 2004 on the file of the I Additional Chief Judge, City Civil Court, Secunderabad. The said appeal was allowed by judgment dated 5-4-2004 holding that the documents on record disclose that the name of the firm is M/s. Veerabhadra & Company and that P. Krishna and K.R.Mallesh are the partners and that the claim of the plaintiffs that it is a proprietary concern requires to be established at the time of hearing of the suit. Having recorded a prima facie finding that the document discloses that the plaintiff was only one of the partners, the appeal was allowed and the temporary injunction granted by the trial court was set aside. Though

the third respondent herein filed C.R.P.No.3434 of 2004, the same was dismissed by this Court by order dated 23-7-2004. Subsequently, it appears that the third respondent made a representation before the Commissioner and Director of Marketing, Government of Andhra Pradesh, Hyderabad, seeking restoration of shop No.B-35 stating that the same was allotted in the name of the firm represented by her husband K.R. Mallesh, being the sole proprietor. In pursuance thereof, the first respondent, by order dated 26-4-2005 directed the Person-in-charge, Agricultural Market Committee, Hyderabad to restore the shop in question to the original allottee. Questioning the said order, this writ petition is filed.

I have heard the learned counsel for both the parties.

The learned senior counsel Sri Gangaiah Naidu, appearing for the writ petitioner, vehemently contended that the impugned order which was passed without affording any opportunity to the writ petitioner to rebut the claim made by the third respondent that it is a proprietary concern, is arbitrary and illegal. That apart, since the civil suit is pending, the 1st respondent ought not to have directed to restore the shop to the original allottee.

On the other hand, the contention of the learned counsel appearing for the third respondent as well as the learned Standing Counsel appearing for the second respondent is that as a matter of fact, there was no impugned order as such, since the impugned proceedings is nothing but an internal correspondence between the first respondent and the Person-in-charge of the Agricultural Market Committee, Hyderabad. As such, the writ petition is premature.

However, a perusal of the impugned order shows that there was a specific direction by the first respondent to restore the shop in question to the original allottee. Evidently, what remains is only implementation of the said order by the Person-in-charge, Agricultural Market Committee, Hyderabad. It is also relevant to note that though there was a direction to restore the shop to the original allottee, there was no finding as to who is the original allottee. The fact that before passing the said order, the writ petitioner was not heard is also not in dispute.

In the circumstances, I am of the view that it is necessary for the first respondent to consider the rival claims made by both the parties and to pass appropriate orders afresh in accordance with law, particularly keeping in view the dispute, which is the subject matter of the suit in O.S.No.1095 of 2003 pending on the file of the XI Junior Civil Judge, City Civil Court, Secunderabad. It is also to be noted that by virtue of the interim orders granted by this Court on 3-5-2005, the operation of the impugned order dated 26-4-2005 was stayed. Consequently, it appears that the petitioner has been running the business in the shop in question.

Accordingly, without expressing any opinion on the rival claims made by the parties, the impugned order dated 26-4-2005 is set aside and the first respondent is directed to consider the matter afresh after affording due opportunity to both the writ petitioner as well as the third respondent and to pass appropriate orders in accordance with law, as expeditiously as possible, preferably, within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. No costs.

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22-09-2005

sj